

Introduced by Senator OrtizFebruary 20, 2003

An act to add Article 6.2 (commencing with Section 25367.1) to Chapter 6.8 of Division 20 of the Health and Safety Code, relating to hazardous substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 559, as introduced, Ortiz. Brownfields response unit.

The Carpenter-Presley-Tanner Hazardous Substance Account Act imposes liability for hazardous substance removal or remedial actions and requires the Department of Toxic Substances Control to adopt, by regulation, criteria for the selection and priority ranking of hazardous substance release sites for removal or remedial action under the act. The act requires the department or, if appropriate, a California regional water quality control board, to prepare or approve remedial action plans for each listed site.

Under existing law, the Site Designation Committee in the California Environmental Protection Agency is authorized to designate an administering agency for oversight of a remedial action to a hazardous substance release. Existing law requires the administering agency to supervise the site investigation and remedial action conducted by the responsible party and, upon determining that the site investigation and remedial action has been satisfactorily completed, to issue a certificate of completion to the responsible party.

This bill would enact the Brownfields Response Unit Program Act and would require the department to establish a brownfields response unit within the department. The act would require the unit to meet specified requirements and to report only to the Director of Toxic Substances Control. The bill would prohibit the department from



requiring the unit's actions to be approved or reviewed by any other unit or division of the department.

The bill would authorize the unit to oversee a response action at a brownfield site pursuant to the act upon the application of a local public entity, as defined, and would authorize the unit to select a site for a response action under the act if the site meets the conditions of a brownfield. The bill would require the unit to follow specified procedures with regard to reviewing an application submitted by a local public entity for oversight of a response action under the act, including holding an initial site conference with all potentially interested state and local agencies. The bill would authorize any state or local agency to participate and provide input at the initial site conference and would prohibit a state or local agency that receives notice of the initial site conference and does not participate or provide input at the initial site conference from imposing any requirement regarding the response action at that brownfield site after the date of the initial site conference, except as specified. The bill would require the remedial site investigation workplan and the removal action workplan for the brownfield site to be submitted and approved in accordance with a specified schedule.

The bill would require the responsible party or, if applicable, the local public entity, to request the unit to issue a certificate of completion, as defined, for a brownfield site when the response action to the site is completed in accordance with an approved removal action workplan. The bill would authorize the unit to issue the certificate upon making a specified finding.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 6.2 (commencing with Section 25367.1)
2 is added to Chapter 6.8 of Division 20 of the Health and Safety
3 Code, to read:

4

5 Article 6.2. Brownfields Response Unit Program Act

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7 25367.1. (a) This article shall be known, and may be cited, as
8 the Brownfields Response Unit Program Act.

9 (b) The Legislature finds and declares all of the following:



1 (1) There are a number of publicly owned infill properties that
2 are vacant or underutilized throughout the state and are commonly
3 known as “brownfields.” These brownfield properties once
4 contained industrial uses that left behind soil or groundwater
5 contaminants after they ceased operation.

6 (2) Cities and redevelopment agencies often purchase, clear,
7 and assemble these brownfields properties as part of downtown
8 redevelopment efforts. However, redevelopment is delayed or
9 fails when the public entities cannot obtain final approval from
10 state regulatory agencies on necessary remediation actions.

11 (3) Many local public entities have been frustrated by the
12 current process that results in unexpected and last minute
13 directives from regulatory agencies that review a remediation
14 process long after the initial plan is first approved by the lead
15 agency. Programs such as the California Expedited Remedial
16 Action Reform Act of 1994 (Chapter 6.85 (commencing with
17 Section 25396)) and unified agency review of hazardous materials
18 release sites under Chapter 6.65 (commencing with Section
19 25260) have been initiated to address this problem, but these
20 programs are available only on brownfield sites that have been
21 voluntarily placed in those programs by responsible parties.

22 (c) It is the intent of the Legislature, in enacting this article, to
23 do all of the following:

24 (1) Close the gap between the stated mission and goals of the
25 United States Environmental Protection Agency and the
26 California Environmental Protection Agency that encourage the
27 revitalization of urban brownfields, and the existing regulatory
28 processes that prevent these goals from being achieved.

29 (2) Establish procedures that are clear, predictable, and
30 time-sensitive to ensure efficient resolution of contamination
31 issues.

32 (3) Set up a dedicated brownfields response unit to oversee a
33 process to expedite the effective cleanup of minimally or
34 moderately contaminated properties, and aid in the revitalization
35 of the state’s inner cities.

36 (4) Streamline the cleanup process at selected brownfields sites
37 by instituting a thorough analysis, with all appropriate regulating
38 agencies, at the initiation of the process in a manner similar to that
39 authorized by the California Expedited Remedial Action Reform
40 Act of 1994 (Chapter 6.85 (commencing with Section 25396)) and



1 the unified agency review of hazardous materials release sites
2 under Chapter 6.65 (commencing with Section 25260).

3 25367.2. Unless the context dictates otherwise, the following
4 definitions govern the construction of this chapter:

5 (a) “Brownfield” or “brownfield site” has the same meaning
6 as “brownfield” as defined in paragraph (2) of subdivision (a) of
7 Section 25395.20.

8 (b) “Certificate of completion” means a determination that the
9 responsible party, if any, and the local public entity have complied
10 with the requirements of all state and local laws, ordinances,
11 regulations, and standards that are applicable to the site
12 investigation and response action for which the certificate is
13 issued. A certificate of completion issued pursuant to this article
14 shall confer the same immunity as, and shall be conditioned on, the
15 same requirements as a certificate of completion issued pursuant
16 to subdivision (c) of Section 25264, except that, for purposes of
17 this article, the department shall be deemed the administering
18 agency.

19 (c) “Lead agency” means the state agency that has the
20 principal responsibility for carrying out or approving any action
21 taken pursuant to this article.

22 (d) “Local public entity” means a city, county, or district, or a
23 redevelopment agency as defined in Section 33003.

24 (e) “Respond,” “response,” or “response action” means a
25 removal action and remedial action, including, but not limited to,
26 site characterization, the preparation and implementation of site
27 remedial investigation workplans and removal action workplans,
28 and implementation of operation and maintenance measures.

29 (f) “Responsible party” includes all of the following:

30 (1) A responsible party or liable person, as defined in Section
31 25323.5.

32 (2) Any person subject to a cleanup or abatement order issued
33 pursuant to Section 13304 of the Water Code.

34 (g) “Unit” means the brownfield response unit established by
35 the department pursuant to Section 25367.3.

36 25367.3. (a) The department shall establish a brownfield
37 response unit within the department, which shall consist of staff
38 that is solely assigned to overseeing response actions to
39 brownfields pursuant to this article. The unit shall include a project
40 manager, an attorney, a toxicologist, a geologist, a hydrogeologist,

1 and any other staff deemed necessary by the department for the
2 implementation of this article.

3 (b) The unit shall be available on a statewide basis and shall
4 meet all of the following requirements:

5 (1) All unit staff shall be familiar with, and trained as necessary
6 in the implementation of, all state programs relating to
7 brownfields, including but not limited to, the Polanco
8 Redevelopment Act (Article 12.5 (commencing with Section
9 33459) of Chapter 4 of Part 1 of Division 24) and the California
10 Expedited Remedial Action Reform Act of 1994 (Chapter 6.85
11 (commencing with Section 25396)).

12 (2) All unit staff shall be trained in the use of agreements, such
13 as covenants not to sue and prospective purchaser agreements, and
14 shall follow the regulations and guidelines adopted for the
15 implementation of this article.

16 (3) In order to expedite the operation of the policies set forth in
17 this article, the unit shall report only to the director, and the
18 department may not require the unit's actions, with regard to
19 oversight of a response action pursuant to this article, to be
20 approved or reviewed by any other unit or division of the
21 department.

22 (c) The department shall adopt regulations to implement this
23 article and promote the redevelopment of brownfield sites.

24 25367.4. (a) The department shall serve as the lead agency
25 for implementing this article and, through the unit, shall act as the
26 oversight agency for purposes of all response actions taken
27 pursuant to this article.

28 (b) The unit may oversee a response action at a brownfield site
29 pursuant to this article only upon the application of a local public
30 entity pursuant to Section 25367.5.

31 (c) The unit may select a site for a response action under this
32 article if the site meets the conditions of a brownfield, as provided
33 in paragraph (2) of subdivision (a) of Section 25395.20 or as
34 determined by the unit at the time the application is filed with the
35 unit.

36 (d) (1) The unit may not oversee a response action pursuant to
37 this article if the brownfield site is currently operating as, or
38 proposed to be developed as, a school, general acute care hospital,
39 long-term health care facility, or child day care facility.



(2) For purposes of this subdivision, “general acute care hospital” has the meaning provided by subdivision (a) of Section 1250, “long-term health care facility” has the meaning provided by subdivision (a) of Section 1418, and “child day care facility” has the meaning provided by Section 1596.750. “School” means any school used for the purpose of the education of more than 12 children in kindergarten or any of grades 1 to 12, inclusive.

(e) The unit shall not oversee more than 30 brownfields pursuant to this article statewide at any given time. The unit shall develop and make available a waiting list that prioritizes the selection of brownfields in excess of that number for which a local public entity has applied for oversight under this article.

25367.5. (a) A local public entity may, in its sole discretion, apply to the unit pursuant to this article for the oversight of a response action to a brownfield site that is located in the jurisdiction of the local public entity

(b) (1) The unit may not require, as a condition of applying for the response action oversight pursuant to this article, that the local public entity agree to carry out and assume responsibility for any response actions deemed necessary by the unit at the site.

(2) The unit may not require a local public entity applying for response action oversight pursuant to this article to own the property that is the subject of the application.

(3) The unit shall require a local public entity applying for response action oversight pursuant to this article to commit to assist in the implementation of this article and to recover reimbursement for the response costs from any responsible party, as authorized by this chapter.

(c) On or before 30 days after the receipt of an application by a local public entity for oversight of a response action pursuant to this article, the unit shall do both of the following:

(1) Meet with representatives of the local public entity to determine the identity of all potentially responsible parties for the brownfield, the environmental conditions at the brownfield, and a preliminary scope of work based upon available data for addressing the environmental conditions at the brownfield site.

(2) Contact all other potentially interested state and local public agencies for the purpose of informing them that a response action has been initiated and an initial site conference will be scheduled.

(d) (1) On or before 90 days after the unit selects a brownfield for oversight pursuant to this article, the unit shall hold an initial site conference with all potentially interested state and local agencies. Any state or local agency may participate and provide input at the site conference with regard to any issue pertaining to the investigation of that site that may reasonably be anticipated.

(2) Notwithstanding any other provision of law, if a state or local agency receives notice of an initial site conference and does not participate or provide input at the initial site conference held pursuant to paragraph (1), the state or local agency may not impose any requirement regarding the response action at that brownfield site after the date of the initial site conference unless the state or local agency demonstrates to the unit, and the unit determines, that there is good cause for imposing that requirement.

(e) (1) Except as provided in paragraph (2), on or before 30 days following the initial site conference held pursuant to subdivision (d), the unit shall notify in writing, via certified mail, all identified potentially responsible parties and potentially interested state and local agencies of the unit's intent to oversee a response action of a brownfield site pursuant to this article, a description of the property, and the date, time, and location of second initial site conference. The unit shall conduct the second initial site conference that shall include all potentially responsible parties, potentially interested state and local agencies, representatives of the local public entity, and representatives of the unit. The second initial site conference shall address all of the following requirements:

(A) The requirements for the completion of a site investigation and the preparation of a site investigation report to determine the nature and extent of suspected releases of hazardous substances at the site.

(B) The requirements for carrying out response activities, including requirements for public notification and public participation.

(2) If no responsible parties have been identified with regard to the brownfield site, the notice requirements of paragraph (1) do not apply, but the unit shall otherwise conduct the second initial site conference specified in paragraph (1).

(e) The remedial site investigation workplan and the removal action workplan for a brownfield site subject to the article shall be

1 submitted and approved in accordance with the following
2 schedule:

3 (1) On or before 60 days after the unit completes the second
4 initial site conference specified in subdivision (d), the responsible
5 party, or if determined by the unit, the local public entity, shall
6 submit a draft site remedial investigation workplan to the unit for
7 review.

8 (2) If the draft site remedial workplan is prepared by anyone
9 other than the local public entity, a copy of the draft site remedial
10 investigation workplan shall concurrently be provided to the local
11 public entity and any other interested public agency for review and
12 comment.

13 (3) On or before 30 days after receiving the draft site remedial
14 investigation workplan, the unit, representatives of the local public
15 entity, and any other interested public agency shall meet and confer
16 as necessary to provide comment and recommendations for final
17 approval of the draft site remedial investigation workplan.

18 (4) On or before 60 days after receiving the draft site remedial
19 investigation workplan, the unit shall notify the party submitting
20 the workplan of the unit's approval of the plan or any required
21 modifications, and shall specify a timeframe for completion of the
22 site investigation pursuant to the approved remedial investigation
23 action workplan.

24 (5) On or before 45 days after the site investigation is complete
25 pursuant to the approved remedial investigation workplan, the
26 responsible party, or if determined by the unit, the local public
27 entity, shall submit a draft removal action workplan to the unit for
28 review.

29 (6) If the draft removal action workplan is prepared by anyone
30 other than the local public entity, a copy of the draft removal action
31 workplan shall concurrently be provided to the local public entity
32 and any other interested public agency for review and comment.

33 (7) On or before 30 days after receiving the draft removal
34 action workplan, the unit, representatives of the local public entity,
35 and any other interested public agency shall meet and confer as
36 necessary to provide comments and recommendations for final
37 approval of the draft removal action workplan.

38 (8) On or before 60 days after receiving the draft removal
39 action workplan, the unit shall notify the party submitting the
40 workplan of the unit's approval of the plan or any required



1 modifications, and shall specify a timeframe for completion of the
2 response action pursuant to the approved removal action
3 workplan.

4 25367.6. (a) Upon completion of a response action to a
5 brownfield site pursuant to a removal action workplan approved
6 pursuant to Section 25367.5, the responsible party, or, if
7 applicable, the local public entity, shall request the unit to issue a
8 certificate of completion for that brownfield site.

9 (b) The unit may issue a certificate of completion only if the
10 unit makes a finding that the brownfield site has been placed into
11 a condition that allows it to be permanently used for its planned use
12 without any significant risk to human health or potential for any
13 future significant environmental damage.

14 25367.7. (a) This article may not be interpreted as providing
15 a private right of action.

16 (b) A local public entity's application for oversight of a
17 response action pursuant to this article is a discretionary action and
18 does not constitute an admission of liability by the local public
19 entity for the environmental conditions of the brownfield site that
20 is the subject of the application.

